

Amendment No. 1 to HB1517

**Fitzhugh
Signature of Sponsor**

AMEND Senate Bill No. 1931*

House Bill No. 1517

by deleting all language after the caption and by substituting instead the following:

WHEREAS, it is a stated policy of the United States of America government and the state of Tennessee to lessen the reliance of our citizens upon foreign produced and imported oil; and

WHEREAS, the federal government has adopted policies which have encouraged the blending of ethanol and other agriculturally produced products with petroleum based fuels in order to supplement such fuel in a manner which benefits the agricultural industry and lessens reliance upon foreign imported petroleum products; and

WHEREAS, the state of Tennessee has encouraged the agricultural production of crops in this state for conversion into ethanol and biodiesel additives to expand the use of these products in commerce and to lessen the dependency on imported petroleum; and

WHEREAS, the state of Tennessee has encouraged, through incentives, the construction of ethanol producing facilities in this state to convert Tennessee agricultural products into fuel additives; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, is amended by adding a new part thereto:

Section 47-25-2001. This part shall be known and may be cited as the "Tennessee Renewable Fuels Blending Act of 2009".

Section 47-25-2002. As used in this part, unless the context otherwise requires:

(1) "Biodiesel" (Biodiesel Fuel Blending Stock) means a fuel comprised of mono-alkyl esters of long chain fatty acids meeting the requirements of ASTM D 6751;

(2) "Blending Stock" means any liquid compound used for blending with other liquid compounds, including catalytically reformed products and additives, to produce gasoline and gasoline-oxygenate blends that are consistent with the requirements of T.C.A. 47-18-1301 et seq. Blending stock includes such products as sub-octane gasoline, conventional blending stock for oxygenate blending (CBOB) and reformulated blending stock for oxygenate blending (RBOB);

(3) "Ethanol" also known as denatured fuel ethanol, means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. Ethanol is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of the Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline;

(4) "Permissive supplier" means any person who is not subject to the general taxing jurisdiction of this state, but who:

(A) Is a position holder in a federal qualified terminal located outside this state;

(B) Is registered for transactions in taxable motor fuels under § 4101 of the Internal Revenue Code in the bulk transfer/terminal distribution system; and

(C) Acquires products in such out-of-state terminals from position holders in transactions that otherwise qualify as two-party exchanges;

(5) "Person" means a natural person, partnership, firm, association, corporation, limited liability company, court appointed representative, state, political subdivision or any other entity, group, or syndicate;

(6) "Position holder" means the person who holds the inventory position in petroleum products in a terminal, as reflected in the records of the terminal operator. A person holds the inventory position in petroleum products when that person has a contract with the operator for the use of storage facilities and terminaling services for petroleum products at the terminal. "Position holder" includes a terminal operator who owns petroleum products in the terminal;

(7) "Refiner" means a person that owns, operates, or otherwise controls a refinery within the United States;

(8) "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor fuel may be removed by pipeline, by marine vessel, or at a rack;

(9) "Retailer" means a person who engages in the business of selling or distributing petroleum products to the end user within this state through a retail station;

(10) "Retail station" means any service station, garage, truck stop or other outlet dispensing motor fuel from a container equipped with a computer-type pump that measures fuel passing through it;

(11) "Supplier" means a person that meets all the following conditions:

(A) Is subject to the general taxing jurisdiction of this state;

(B) Is registered under § 4101 of the Internal Revenue Code for transactions in taxable motor fuels in the bulk transfer/terminal system; and

(C) Is one of the following:

(i) The position holder in a terminal or refinery in this state, or is one who receives fuel from a position holder within a terminal or refinery in this state;

(ii) A person who imports taxable petroleum products into this state from a foreign country;

(iii) A person who acquires taxable petroleum products from a terminal or refinery outside this state for import into this state on such person's account; or

(iv) A person who is the receiving supplier on a two-party exchange;

(12) "Terminal" means a storage and distribution facility for taxable motor fuel, supplied by pipeline or marine vessel, that is registered as a qualified terminal by the internal revenue service;

(13) "Two-party exchange" means a transaction in which a petroleum product is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier pursuant to an exchange agreement:

(A) Which transaction includes a transfer from the person that holds the inventory position for taxable motor fuel in the terminal as reflected on the records of the terminal operator; and

(B) The exchange transaction is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(14) "Wholesaler" means an entity which acquires petroleum products from a supplier, importer, or from another wholesaler, for subsequent sale and distribution at wholesale by tank cars, transport trucks or vessels, and subsequently resells to retailers, other wholesalers or to consumers from its own or its wholly owned affiliated retail locations.

Section 47-25-2003. All refiners, suppliers and permissive suppliers in this state shall make available to a wholesaler gasoline or gasoline blending stock that has not been blended with, but is suitable for blending with ethanol. All refiners, suppliers and permissive suppliers in this state shall make available to a wholesaler diesel that is suitable for blending with biodiesel. Diesel sold by refiners, suppliers and permissive suppliers to wholesalers may contain up to five percent biodiesel. Gasoline and gasoline blending stock, as applicable, must be made available with detergent additives in sufficient concentrations such that after the addition of ethanol at the maximum volume percent permitted by state and federal law, the final product meets or exceeds the Lowest Additive Concentrations as required by the United States Environmental Protection Agency (EPA).

Section 47-25-2004. Any contract or provision between a wholesaler and a refiner, supplier, or permissive supplier executed or renewed on or after the effective date of this act, which forbids, limits or restricts a wholesaler's ability to blend petroleum products with ethanol or biodiesel, shall be void as against public policy. Nothing in this section shall prohibit a franchisor or the holder of a trademark from selecting its own customers in bona fide transactions and not in restraint of trade, and from including in its contracts, franchise or licensing agreements those reasonable terms which allow such franchisor or licensor to require its franchisees or licensees to maintain the quality and integrity of the blended products produced under this part so long as such terms are consistent with the provisions of the Tennessee Petroleum Trade Practices Act (T.C.A. §

47-25-601 et seq.), The Federal Petroleum Marketing Practices Act, (15 U.S.C.A. 2801, et seq.) and § 47-25-2003.

Section 47-25-2005.

(a) Upon a complaint by a wholesaler and upon investigation by the commissioner of agriculture and after the commissioner determines that a refinery, supplier or permissive supplier in the state of Tennessee is in willful non-compliance with this part, the commissioner of agriculture may assess fines up to five thousand dollars (\$5,000) per day for each day of the willful violation. Such fines shall be used to pay for the cost of investigation, hearing and other related administrative costs. The remainder of the funds shall be used to fund grants designated by the commissioner of agriculture for the promotion of biofuel research, technology, or agricultural development, biofuel production facilities, or retail infrastructure and installation for biofuel distribution.

(b) Upon receiving a complaint and initiating an investigation, the commissioner or the commissioner's agent, presenting appropriate credentials, is authorized to enter the place of business of any refiner, supplier or permissive supplier in this state during normal business hours to examine, and obtain samples of, such records as may be necessary to determine compliance with this part. Refiners, suppliers and permissive suppliers in this state shall hold such records open for inspection by all officers or inspectors charged with the enforcement of this act, and shall preserve and retain such records for a period of at least one (1) year. If the owner of any refiner, supplier, or permissive supplier, or the owner's agent, refuses to admit the commissioner, or the commissioner's agent, to inspect in accordance with this section, the commissioner is authorized to obtain from any state court a court order directing the owner or the

owner's agent to submit the premises described in the warrant to inspection.

(c) A refinery, supplier, or permissive supplier who is aggrieved by a proposed departmental order to enforce provisions of this part shall be entitled to a contested case hearing to be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 47-25-2006. Wholesalers purchasing gasoline, gasoline blending stock, or diesel are responsible for ensuring that their activities result in gasolines and diesels that meet the standards promulgated by the commissioner of agriculture. Refiners, suppliers and permissive suppliers shall not be liable for injuries or damages arising out of the subsequent blending of gasoline or gasoline blending stock pursuant to this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect January 1, 2010, the public welfare requiring it.